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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/990,705	11/21/2001	Judith K. Gwathmey	JGT-004	3899

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LOWRIE, LANDO & ANASTASI  
RIVERFRONT OFFICE  
ONE MAIN STREET, ELEVENTH FLOOR  
CAMBRIDGE, MA 02142

EXAMINER

AFREMOVA, VERA

ART UNIT PAPER NUMBER

1651

DATE MAILED: 07/13/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Advisory Action</b>	<b>Application No.</b> 09/990,705	<b>Applicant(s)</b> GWATHMEY ET AL.	
	<b>Examiner</b> Vera Afremova	<b>Art Unit</b> 1651	

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 28 June 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY** [check either a) or b)]

- a) ☐ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on \_\_\_\_\_. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
  - (b) ☐ they raise the issue of new matter (see Note below);
  - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
  - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_.

3. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.
4. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☐ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: none.

Claim(s) objected to: none.

Claim(s) rejected: 1-13.

Claim(s) withdrawn from consideration: 14-26.

8. ☐ The drawing correction filed on \_\_\_\_\_ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_.
10. ☐ Other: \_\_\_\_\_

**VERA AFREMOVA PH.D.**  
**PATENT EXAMINER**

Continuation of 5. does NOT place the application in condition for allowance because:

With regard to 112-2 issues applicants argue that the claimed method clearly refers to exposing tissue to a first solution with a selected amount of calcium chloride and then exposing the tissue to additional solution(s) having calcium concentration about 1-2 mM less than the selected amount. Applicants argue that the claimed method clearly refers to exposing cells after disassociation to a second solution with a selected amount of calcium and then repeatedly resuspending in additional solution(s) having calcium concentration about 1-2 mM more at each consecutive step. But this is not what claim recites. The claimed method neither indicates the selected amount nor it encompasses the concept of decreasing and/or increasing calcium concentration by 1-2 mM every consecutive step before and after dissociation.

With regard to the reference by Kruppenbacher et al. applicants argue that it does not teach the concept of decreasing and/or increasing calcium concentration in the method for cardiac cell isolation. This is not found true. The reference clearly teaches steps of increasing calcium concentrations, for example: "cardiomyocytes were recalcified in three steps 0.2/0.5/1.0 (see page 133, col. 1, line 48). The reference might not clearly disclose a specific protocol of decreasing calcium concentration. However, at the very least it teaches this concept by the fact that cardiomyocytes had to be "recalcified". Moreover, the reference teaches step of transferring tissues from buffer to water (see page 133, col. 1, line 38) and, thus, it teaches step of decreasing calcium concentration. .

V.A.